

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

**SCOTT BEASLEY, et al.,**

**Plaintiffs,**

**v.**

**AZZ, Inc. d/b/a AZZ Galvanizing,**

**Defendant.**

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**Case No. 15-CV-250-TCK-FHM**

**OPINION AND ORDER**

Before the Court is Defendant's Motion for Summary Judgment on Plaintiff C&D Investment Properties, LLC's Claims Based on Lack of Capacity to Sue (Doc. 19). Plaintiff has failed to respond, and the motion is therefore unopposed.

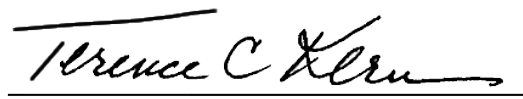
Even when a dispositive motion is unopposed, the Court remains obligated to determine if the summary judgment motion is properly "supported" pursuant to Federal Rule of Civil Procedure 56(c). *Reed v. Bennett*, 312 F.3d 1190, 1194 (10th Cir. 2002). Summary judgment is appropriate only if the moving party demonstrates that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See id.*; Fed. R. Civ. P. 56. "By failing to file a response within the time specified by the local rule, the nonmoving party waives the right to respond or to controvert the facts asserted in the summary judgment motion." *Reed*, 213 F.3d at 1195. "The court should accept as true all material facts asserted and properly supported in the summary judgment motion." *Id.* However, summary judgment should only be granted if those facts entitle the moving party to judgment as a matter of law. *Id.*

Based on undisputed evidence, Defendant has shown that Plaintiff C&D Investment Properties, LLC ("C&D") failed to file an annual certificate with the State of Oklahoma, failed to pay the annual certificate fee, and is no longer an active Oklahoma limited liability company. *See*

Okla. Stat. tit. 18, § 2055.2(D) (failing to file certificate and pay fee results in LLC ceasing to be in good standing). As an LLC that has ceased to be in good standing, C&D lacks capacity to sue under Oklahoma law. *See* Okla. Stat. tit. 18, § 2055.2(F). C&D therefore lacks capacity to sue under Federal Rule of Civil Procedure 17(b)(3) (capacity to sue limited liability companies governed by state law).

Defendant's Motion for Summary Judgment on Plaintiff C&D Investment Properties, LLC's Claims Based on Lack of Capacity to Sue (Doc. 19) is GRANTED. Judgment is granted in favor of Defendant as to any claims asserted by C&D.

**IT IS SO ORDERED** this 6<sup>th</sup> day of October, 2015.

  
TERENCE C. KERN  
UNITED STATES DISTRICT JUDGE